In the Supreme Court of the United States

No. 1009

OCTOBER TERM, 1958

ROBERT HIGHAM, HARRY KAUFMAN, ABRAHAM SCHWARTZ, and FRANK ZANGARA,

Petitioners,

vs.

WILLIAM J. GAW, JOSEPH SAMMARTINO and JOSEPH L. CARELLY,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS

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QUESTION PRESENTED.

Whether duly nominated candidates for office in a local labor union are indispensable parties to an action, not a class action, brought by some of the incumbent officers of such local union, in their individual names, to declare such candidates ineligible to run for office.[1]

Comment: Questions 2 and 3 as stated in the petition were not passed upon by the Court of Appeals, and in the absence of such a determination, do not appear appropriate for decision by this Court. Furthermore, it would not appear that the questions would in any circum-

[1] Related questions, in the event the writ is granted, may be whether the local union itself, or the International Union, are also indispensable parties.

stances be reached by this Court. If respondents are indispensable parties as held by the Court of Appeals, there is admittedly no federal jurisdiction; if they are not indispensable parties, then their dismissal by the District Court was proper, and no adversary parties would remain in the case to argue those questions.

STATEMENT OF THE CASE.

A few additions and corrections must be made to the statement of the case contained in the petition.

While it is admitted that respondents did not pay an extra month's dues in advance (see page 4 of the petition), it is not admitted that such payment was required by the Constitution as a condition for eligibility for office, nor that the pertinent provision was valid, or then effective.

James R. Hoffa, President of the International, did not fail to interpret the Constitution, as stated on page 5 of the petition. In a letter to the Chairman of the Board of Monitors, refusing to carry out the ruling of the Board with respect to respondents' eligibility, he stated, "Carelly, Gaw, and Sammartino [respondents herein] have not retained their good standing as dictated by the express language of the 1957 Constitution. Under these circumstances I cannot direct Local No. 377 to declare these individuals eligible for nomination and I have no alternative but to decline to follow your recommendation in this regard." Appellants' Court of Appeals appendix, 41a.

Petitioners are in error in stating that the action of the local union at the meeting of November 5, 1958, was taken "despite the fact that a preliminary injunction had issued from the District Court * * *." (Page 5 of the petition.) The preliminary injunction was not granted until November 13, 1958. See appellants' Court of Appeals appendix, 1a-2a.

Significant facts not brought out in the petition should be noted. This is not a class action, but was brought by petitioners in their individual names. The local union itself was not made a party to the action, either by name, or through the medium of a class action, nor was the International.

Other than respondents, there was no party to the action who represented, or was in sympathy with, the interests of respondents, or the interests of union members claimed to be ineligible for office because of failure to pay one month's dues in advance. Petitioner Higham, as chairman of the nominating meeting, ruled respondents ineligible for office, and his ruling was ratified by all of petitioners acting as a majority of the local union's executive board. Two of petitioners are opposing candidates for the same offices as two of respondents. As indicated above, Mr. Hoffa had definitely taken the position that respondents were ineligible for office, and Mr. English was apparently of the same mind. As stated by counsel for Hoffa and English, "Our position in this matter is tantamount to that of [petitioners] in this case." Appellants' Court of Appeals appendix, 18a.

It should be noted here that neither the complaint nor the amended complaint stated respondents' citizenship, and since the District Court did not pass upon respondents' motion to dismiss for want of jurisdiction, the record before the Court of Appeals did not show whether there was diversity of citizenship between petitioners and respondents. Consequently, the Court of Appeals remanded the case rather than dismissing it for want of jurisdiction. However, it is not disputed that petitioners and respondents are all citizens of the State of Ohio, and a stipulation to that effect has since been filed with the District Court.

ARGUMENT.

While the problem of protecting the rights of individual members of vast, nationwide labor organizations is a matter of great public interest, and a case presenting an opportunity to define and delineate the correlative rights and duties of a national labor union and its members might well be appropriate for the exercise of this Court's certiorari jurisdiction, such a case is not presented here.

Because of the peculiar factual and procedural development of this case—not likely to be duplicated—the sole issue appropriate for consideration by this Court relates to indispensability of parties in a diversity case. The sole issue passed upon by the Court of Appeals was whether respondents were indispensable parties in the present action.

In finding that respondents were indispensable parties the Court of Appeals relied upon the classic test of indispensable parties as first laid down by this Court over a hundred years ago in *Shields v. Barrow*, 17 How. 130, 15 L. Ed. 158, and never, to respondents' knowledge, questioned or repudiated since then. It was approved by this Court as recently as 1954 in *Lumbermen's Mutual Casualty Company v. Elbert*, 348 U. S. 48, 75 S. Ct. 151, 99 L. Ed. 59. That test as phrased by the Court of Appeals in the present case, is as follows:

> "An indispensable party is one who not only has an interest in the controversy but an interest of such a nature that a final decree can not be made without either affecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience." (Appendix to petition, pages 15-16.)

The law applied by the Court of Appeals is well settled, and has been so for over a century. There is not even the

slightest breath of a conflict warranting the exercise of this Court's certiorari jurisdiction.

The applicability of the law to the facts of this case seems equally without difficulty; though the background of the case is somewhat unique and complex. The holding of the Court of Appeals that respondents were indispensable parties under the *Shields v. Barrow* rule appears eminently sound. A decree entered in this case would necessarily either adversely affect respondents' interest, or leave undecided the only genuine controversy presented to the court. The best evidence of this is the holding of the District Court itself. Respondents were found ineligible for office, and a decree was entered which if allowed to stand, would bar them from standing as candidates for office in Local 377. There is no need for hypothesis; the decree of the District Court did unquestionably adversely affect the rights of respondents, while denying them the opportunity to present evidence and arguments to protect those rights. This is the very situation that the indispensable party rule seeks to avoid.

Petitioners seek to urge the existence of a separate controversy between themselves and Mr. Hoffa, to which, they claim, respondents would not be indispensable parties. But as stated by the Court of Appeals, "There was no dispute between them. They all were opposed to [respondents], and wanted to prevent them from being candidates for office, and from being elected to office." (Appendix to petition, page 15.) The only genuine controversy, as fully appears from the pleadings and the record, was over respondents' eligibility to office, and the Court of Appeals holding that respondents were indispensable parties to the determination of that controversy certainly cannot be such a departure from established principles as to call for the corrective exercise of this Court's certiorari jurisdiction.

There is no conflict between Courts of Appeals here, nor is there likely to be one. The questions of federal law involved have been long settled, and have been properly applied. The stature of the case at this point does not raise any question of great public interest which could be settled by this Court. If there has been any departure from the accepted and usual course of judicial proceedings, it has been corrected by the Court of Appeals. In short, there appears no grounds warranting the exercise of this Court's certiorari jurisdiction.

CONCLUSION.

The petition for writ of certiorari should be denied.

Respectfully submitted,

JOHN H. RANZ,

Counsel for Respondents.